

who earned \$4 a day, inasmuch as the evidence is that the plaintiff not only earned \$1 a day in addition to the profit upon his workmen and materials, but carried on business as a manufacturer. It appears to have been inferred that the jury intended to assess damages only up to the time of the trial, from their answer to one of the questions put to them in the articulation of facts. But their Lordships are by no means satisfied that such was the intention of the jury. They are first asked:—"Has the plaintiff ever since the said accident been disabled from doing business, and to what extent is he disabled from attending to business? Answer.—"He has been disabled up to the present time;"—that is to say, they did not think him cured. Then the question is put, which divides itself into three:—"Is the plaintiff the head of a family composed of his wife and three children? Are they all dependent upon his labour for their maintenance? Have they ever since been deprived of his labour, and to what extent in the future will they be deprived of his labour? Answer.—He is the head of a family consisting of a wife and three children; one, a son, is not dependent; wife and two girls dependent." The answer to the second part of the question is:—"They have been deprived;" and to the third, the jury answer that they cannot form a judgment.

Their Lordships scarcely understand on what principle this question should have been put to the jury. The question in the cause was not what damage had been sustained by the plaintiff's wife and children, but what damage had been sustained by himself. If he had been killed, and such an action as that brought under Lord Campbell's Act in this country could be maintained in Canada, then the question would be what damage was sustained by his wife and children. But the jury are further asked, "To what extent in the future will the wife and children be deprived of his labour?" It had been originally proposed to put the question in the form:—"For what time, under probable circumstances, or in all probability, would they be deprived?" But on the defendants' objection the question stands in its present form, and the jury are required to fix the time when the plaintiff will recover. They declined to do what no witness, medical or otherwise, had attempted, but their Lordships

do not therefore infer that when they answer the further question, "Has the plaintiff suffered damages by the said accident, and, if so, to what amount?" they excluded all consideration of future loss. If they had thought that the plaintiff would be disabled for all the rest of his life, in their Lordships' view the damages would be too small; but if they adopted the intermediate view, which seems to be, on the whole, the result of the evidence of the plaintiff's witnesses, medical and otherwise, that the plaintiff had been seriously injured, that he still continued to suffer, that his brain still continued somewhat affected, that he was unable to attend to business, and that it was uncertain whether he would ever recover, although he might recover, their Lordships feel unable to say that the damages given were so excessive as to justify a new trial upon that ground. They observe that the law of Canada, as expressed by the Article 426, section 11, is not far different from that of this country upon this subject: "If the amount awarded be so small or so excessive that it is evident the jury must have been influenced by improper motives, or led into error," then a new trial must be granted. On the whole, their Lordships are by no means satisfied that the damages are of such an excessive character as to show that the jury have been either influenced by improper motives or led into error, and they are of opinion that there ought to be no new trial.

Therefore, their Lordships will humbly advise Her Majesty that the judgment of the Court of Queen's Bench be reversed, that the judgment of the Superior Court of Montreal be affirmed, and that the Appellant have the costs of the Appeal in Canada and of the Appeal to Her Majesty in Council.

SUPERIOR COURT.

MONTREAL, April 30, 1880.

QUINTAL V. MONDON et al.

Sale of moveable successively to two persons—C. C. 1027—Fraud of second purchaser.

JOHNSON, J. This is an action to recover damages from the defendants for having demolished a house on the plaintiff's land and belonging to him; I say belonging to him, because though the defendants raise the question of his